

TITLE 14: COMMERCE  
SUBTITLE A: REGULATION OF BUSINESS  
CHAPTER II: ATTORNEY GENERAL

PART 250  
TOBACCO PRODUCTS MANUFACTURERS'  
ESCROW ENFORCEMENT ACT OF 2003

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AUTHORITY: Implementing and authorized by Sections 25 and 35 of the Tobacco Products Manufacturers' Escrow Enforcement Act of 2003 [30 ILCS 167].

SOURCE: Adopted at 27 Ill. Reg. 7719, effective April 16, 2003; emergency amendment at 28 Ill. Reg. 939, effective January 1, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

**Section 250.10 General**

This Part provides for enforcement of the Tobacco Product Manufacturers' Escrow Act [30 ILCS 168], in accordance with the Tobacco Products Manufacturers' Escrow Enforcement Act of 2003 [30 ILCS 167] (see P.A. 93-446). The former Act, passed as a result of the Master Settlement Agreement (MSA) entered into between 46 states, including Illinois, and the major tobacco companies, requires tobacco product manufacturers not participating in the MSA to set up qualified escrow accounts and to deposit funds into those accounts based on the number of manufacturers' cigarettes sold in each state. The latter Act provides for enforcement of the escrow obligations.

(Source: Amended at 28 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 250.20 Definitions**

"AGO" means the Office of the Illinois Attorney General.

"Brand family" has the same meaning prescribed in Section 10 of the Escrow Enforcement Act.

"Cigarette" has the same meaning prescribed in Section 10 of the Escrow Act [30 ILCS 168], which includes roll-your-own ("RYO") tobacco.

"Department" means the Illinois Department of Revenue.

"Director" means Director of Revenue.

"Distributor" has the same meaning prescribed in Section 1 of the Cigarette Tax Act [35 ILCS 130], and Section 1 of the Cigarette Use Tax Act [35 ILCS 135], and, in addition, means a distributor of roll-your-own tobacco in accordance with Section 10-5 of the Tobacco Products Tax Act of 1995 [35 ILCS 143], as appropriate.

"Escrow Act" means the Tobacco Product Manufacturers' Escrow Act [30 ILCS 168].

"Escrow Enforcement Act" means the Tobacco Products Manufacturers' Escrow Enforcement Act of 2003 [30 ILCS 167] (see P.A. 93-446).

"Filed" means received by the AGO in readable form, however transmitted, or postmarked for delivery by the U.S. mail.

"Liability year" means the calendar year in which a tobacco product manufacturer's cigarettes are sold in Illinois, and to which the requirements of the Escrow Act apply.

"NPM" means a tobacco product manufacturer that is not a Participating Manufacturer.

"Participating manufacturer" has the same meaning prescribed in Section 15(a)(1) of the Escrow Act [30 ILCS 168].

"Qualified Escrow Fund" has the same meaning prescribed in Section 10 of the Escrow Act.

"Stamps or imprints" means revenue tax stamps or imprints as provided for in Section 3 of the Cigarette Tax Act or stamps or imprints evidencing the payment

of cigarette use tax as provided for in Section 3 of the Cigarette Use Tax Act, as appropriate.

"Tobacco product manufacturer" or "TPM" has the same meaning prescribed in Section 10 of the Escrow Act.

"Units sold" has the meaning prescribed in Section 10 of the Escrow Act.

(Source: Amended at 28 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 250.30 Distributor Filings**

- a) Each distributor shall report quarterly to the AGO on paper or electronic forms provided by the AGO such information as is necessary for the AGO to ascertain the quantity of each NPM's cigarettes sold in Illinois by the distributor during the preceding quarter. Paper forms shall be sent to: Office of the Illinois Attorney General, 500 South Second Street, Springfield, Illinois 62706. Paper forms may alternatively be faxed to (217) 524-4701. Electronic forms shall be e-mailed to tobacco@atg.state.il.us. The quarterly information to be reported shall include:
  - 1) The number of each NPM's cigarettes distributed by the distributor within Illinois, by brand.
  - 2) The equivalent stick count of each NPM's RYO tobacco distributed by the distributor within Illinois, by brand.
  - 3) The NPM name and address for each brand.
  - 4) The name and address of the person or entity from whom the distributor purchased or obtained the brand.
  - 5) The name and address of the first importer of foreign NPM brands or the first purchaser of non-resident NPM brands.
- b) The information required by subsection (a) shall be filed prior to the 20<sup>th</sup> day after the end of each calendar quarter. The filing for:
  - 1) January, February, and March is due on or before April 20.
  - 2) April, May, and June is due on or before July 20.
  - 3) July, August, and September is due on or before October 20.
  - 4) October, November, and December is due on or before January 20 of the following year.
- c) Distributors not selling any NPM brands for the relevant time period shall timely file a form as described in subsection (a) marked "none".
- d) Distributors shall maintain and make available to the Attorney General all records, invoices, and documentation relating to or reflecting purchases and sales of NPM cigarettes, which records, invoices and documentation provide a basis for the filings under subsection (a), for a period of not less than five years after the date of sale.

- e) Distributors shall provide an electronic mail address to the AGO for the purpose of receiving electronic mail updates and notifications.
- f) Distributors shall provide any additional information requested by the AGO including, but not limited to, samples of packaging, labeling of each brand family, names of customers and quantities of each brand sold to them and a statement signed by an officer of the manufacturer, under penalty of perjury, certifying whether the manufacturer is, or is not, a participating tobacco manufacturer under the MSA.
- g) Distributors not complying with this Section 250.30, or filing false or inaccurate information with the AGO, may be deemed to be in violation of the Escrow Enforcement Act and dealt with in accordance with Section 250.110.

(Source: Amended at 28 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 250.40 Prohibition of Distribution of Non-Compliant TPM Cigarettes**

- a) A distributor shall not affix or cause to be affixed stamps or imprints to individual packages of cigarettes delivered or caused to be delivered by the distributor in Illinois, and may not otherwise deliver or cause to be delivered in Illinois RYO tobacco, if the tobacco product manufacturer of those cigarettes or RYO tobacco does not appear on either the directory of participating manufacturers or the directory of compliant NPMs.
- b) A distributor that affixes or causes to be affixed stamps or imprints to individual packages of cigarettes for delivery in Illinois, or that otherwise delivers or causes to be delivered RYO tobacco in Illinois, which cigarettes or RYO tobacco are manufactured by a tobacco product manufacturer whose name on the date of stamping or imprinting (of cigarettes), or on the date of delivery (of RYO tobacco), does not appear on either the directory of participating manufacturers or the directory of compliant NPMs, may be deemed to be in violation of the Escrow Enforcement Act and may be dealt with in accordance with Section 250.110.

(Source: Amended at 28 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 250.50 Appointment of Agent for Service of Process**

- a) Any non-resident or foreign NPM that has not registered to do business in this State shall appoint an agent located within the State of Illinois to receive service of process on behalf of that non-resident or foreign NPM. On forms provided by the AGO, the NPM shall submit the name, address, phone number, company name (if applicable) and hours of availability of the agent, as well as proof of appointment, to the Director and the AGO.
- b) If the NPM terminates the authority of the agent, the NPM shall notify the Director and the AGO of the termination at least 30 calendar days prior to the termination, and provide proof at least 5 calendar days prior to the termination of the appointment of a new agent. If the agent terminates an agency appointment, the NPM shall notify the Director and the AGO of the termination no later than 5 calendar days after the termination, and shall include proof of the appointment of a new agent.
- c) Any foreign or non-resident NPM that fails to appoint an agent as required by this Section and in Section 20 of the Escrow Enforcement Act shall be deemed to appoint the Illinois Secretary of State as the agent on whom process may be served on its behalf. However, such appointment will not satisfy the condition precedent for having its brand families listed in the directory of compliant NPMs.

(Source: Amended at 28 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)



**Section 250.60 Certification Requirements for Tobacco Product Manufacturers**

- a) No later than April 30 of each year, on paper or electronic forms provided by the AGO, every tobacco product manufacturer whose cigarettes or RYO tobacco were sold in Illinois during the preceding calendar year shall execute and deliver to the AGO a certification acknowledging under penalty of perjury that:
  - 1) as of the date of the certification, the tobacco product manufacturer is a participating manufacturer or an NPM;
  - 2) if it is a participating manufacturer, it has generally performed its financial obligations under the MSA;
  - 3) if it is an NPM, it is in full compliance with the Escrow Act and the Escrow Enforcement Act.
- b) The certification of a participating manufacturer shall include:
  - 1) a list of its brand families, which list shall be updated 30 days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the AGO;
  - 2) that the brand family is deemed to be its cigarettes for purposes of calculating payments under the MSA in the volume and shares determined pursuant to the MSA.
- c) The certification of an NPM shall include:
  - 1) a complete list of all of its brand families, which list shall be updated 30 days prior to any addition to or modification of its brand families by executing a supplemental certification to the AGO, and the number of units sold for each brand family in Illinois during the preceding calendar year;
  - 2) that the brand family is deemed to be its cigarettes for purposes of Section 15 of the Escrow Act;
  - 3) a complete list of all of its brand families that have been sold in Illinois during the current calendar year;
  - 4) a complete list of all of its brand families that were sold in Illinois during the preceding year that are no longer being sold in Illinois as of the date of the certification;

- 5) the name and address of any other manufacturer in the preceding calendar year of a brand family for which certification is sought;
  - 6) that it is registered to do business in Illinois or has appointed a registered agent for service of process and provided notice thereof as required by Section 20 of the Escrow Enforcement Act;
  - 7) that it has established, continues to maintain, and has fully funded a qualified escrow account pursuant to Section 15 of the Escrow Act;
  - 8) that it has executed a qualified escrow agreement that has been reviewed and approved by the AGO;
  - 9) the name, address and telephone number of the financial institution where the NPM has established its escrow account;
  - 10) the account number of the escrow account, and the sub-account number for Illinois;
  - 11) the amount the NPM deposited into the escrow account for cigarettes sold in Illinois during the preceding calendar year, including the dates and amounts of each deposit, and evidence thereof;
  - 12) the dates and amounts of any withdrawal or transfer from any escrow account established, maintained, or funded by the NPM;
  - 13) that it is otherwise in full compliance with the Escrow Act and the Escrow Enforcement Act as well as any regulations, including all quarterly installment payments.
- d) All records, invoices and documentation relied upon for certification shall be maintained by a TPM for at least 5 years.
- e) Participating manufacturers and NPMs shall provide any additional information requested by the AGO including, but not limited to, samples of packaging, labeling of each brand family, contracts to manufacture a brand family and proof of first importer status under the MSA.

(Source: Added at 28 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 250.70 NPMs Required to Make Quarterly Installment Payments**

- a) Whenever the AGO determines that compliance with the Escrow Act will be promoted by requiring certification and escrow deposits more frequently than on an annual basis, the AGO may require an NPM, on a case-by-case basis, to certify its compliance with the Escrow Act and make its required escrow deposits in quarterly installments during the Liability Year. Factors which may be considered in making this determination include, but are not limited to, the following:
  - 1) the initial addition of an NPM to the directory of compliant NPMs;
  - 2) a history of the NPM not complying with the Escrow Act;
  - 3) a history of the NPM under-funding its qualified escrow account;
  - 4) a history of the NPM failing to timely pay, or failing to pay entirely, judgments or penalties due under the Escrow Act to a qualified escrow account or to the AGO;
  - 5) credible evidence supporting a concern by the AGO that the NPM may not be financially able to meet its fiscal obligations under the Escrow Act when they become due on April 30 of the following calendar year;
  - 6) a volume of more than 2,000,000 cigarettes sold during a calendar quarter.
- b) The initial notice of the AGO's determination requiring the payment of quarterly installments shall include:
  - 1) the basis for the determination;
  - 2) the date the first quarterly payment is due, such date being a minimum of 30 days after the date of notice;
  - 3) that the NPM may request review of the AGO's determination in the manner set forth in Section 250.100 no later than 30 days after the date of notice;
  - 4) the requirement that quarterly installment payments shall be made for four quarters where the basis for quarterly installment payments is the initial addition of an NPM to the directory of compliant NPMs; and
  - 5) a copy of the State of Illinois Affidavit of Nonparticipating Manufacturer Regarding Quarterly Escrow Payment.

- c) Each NPM required to make quarterly installment payments shall:
  - 1) make its required escrow deposit based upon Illinois sales for the previous quarter;
  - 2) provide proof of deposit for each quarterly installment;
  - 3) file quarterly with the AGO the State of Illinois Affidavit of Nonparticipating Manufacturer Regarding Quarterly Escrow Payment; and
  - 4) file a State of Illinois Affidavit of Nonparticipating Manufacturer Regarding Escrow Reconciliation Payment, make a final reconciliation payment and provide proof of deposit on or before April 15 of the year following the liability year.
- d) The information required by subsection (c) shall be filed on or before the last day of the month following the end of the quarter. The filing for:
  - 1) January, February, and March is due on or before April 30.
  - 2) April, May and June is due on or before July 31.
  - 3) July, August and September is due on or before October 31.
  - 4) October, November and December is due on or before January 31 of the following year.
- e) The AGO shall notify the NPM of the date it can cease making quarterly installment payments.
- f) NPMs not complying with this Section, or filing false or inaccurate information with the AGO, may be deemed to be in violation of the Escrow Enforcement Act and will be dealt with in accordance with Section 250.110. In addition, NPMs not complying with this Section shall be subject to a penalty not to exceed 5% of the amount improperly withheld from escrow per each day of the violation, and in a total amount not to exceed 100% of the original amount improperly withheld from escrow.

(Source: Added at 28 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 250.80 Establishment of Directory of Participating Manufacturers and Compliant NPMs**

- a) The AGO shall develop, maintain, and publish a directory of participating manufacturers who have generally performed their financial obligations under the MSA (or provide a web address link to a directory maintained by the National Association of Attorneys General), and a separate directory of compliant NPMs who have established a qualified escrow account and who are otherwise in compliance with Section 15(a)(2) of the Escrow Act and Section 15(a)(2) and (3) of the Escrow Enforcement Act.
- b) The directories shall be published on the AGO's website ([www.illinoisattorneygeneral.gov](http://www.illinoisattorneygeneral.gov)) and shall be revised as necessary as new information is received by the AGO. Notice of the addition or removal of an NPM or brand family from the directory shall be provided to distributors 10 calendar days prior to the change. Notice of such change shall also be provided to the NPM that is being added or removed (or whose brand family is being added or removed). The notice shall be sent to the NPM or its agent for service of process by certified mail 10 calendar days prior to the change.
- c) The AGO shall not place an NPM on the directory of compliant NPMs unless all outstanding final judgments (including interest thereon) for violations of the Escrow Act and the Escrow Enforcement Act have been fully satisfied for that brand family and NPM, and:
  - 1) the NPM has had sales in one or more Liability Years prior to the date of the directory's publication and it is in full compliance with its escrow obligations under the Escrow Act and the Escrow Enforcement Act and Section 250.70 as to such sales, including the payment of any applicable penalties; or
  - 2) the NPM is a successor to a tobacco product manufacturer that has had sales in one or more Liability Years prior to the date of the directory's publication, and it has deposited funds into a qualified escrow account to fully fund all prior Liability Year obligations for all of its predecessor's brands and paid all the penalties due for all such brands for all prior Liability Years, if the NPM's predecessor has not already done so; or
  - 3) the NPM has had no sales in any prior Liability Years but has established a qualifying escrow account (as evidenced by an approved Escrow Agreement) and is otherwise compliant with the Escrow Act and the Escrow Enforcement Act.

- d) Under Section 15(a)(2) of the Escrow Act, each NPM for a particular brand family is jointly and severally liable with every other NPM for that particular brand family for all Liability Year escrow obligations and penalties.
- e) In determining compliance for purposes of placing an NPM on the directory of compliant NPMs, the AGO may consider the following:
  - 1) distributor filings;
  - 2) the NPM's certifications and affidavits;
  - 3) the NPM's escrow agreement;
  - 4) the timeliness of the NPM's deposits into the escrow account;
  - 5) the timeliness of the NPM's payment of penalties due;
  - 6) the requirements for placement on the directory as set forth in this Part and in the Acts;
  - 7) whether the NPM is, in fact, the manufacturer of the brands with respect to which the NPM seeks to be listed as compliant; and
  - 8) information from any other source (e.g., U.S. Department of the Treasury, Department of Revenue, distributors) that pertains to the verification of the accuracy of the information provided by the NPM.

(Source: Added at 28 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 250.90 Release of Escrow Account Money**

- a) Funds deposited by a tobacco product manufacturer pursuant to Section 15 of the Escrow Act shall be released from escrow only:
  - 1) to pay a judgment or settlement on any released claim brought against the tobacco product manufacturer by the State or any releasing party located or residing in the State;
  - 2) to the extent a tobacco product manufacturer establishes that the amount it was required to place into escrow was greater than the MSA payments, as determined by Section IX(i) of that Agreement, in which case the excess shall revert back to the tobacco product manufacturer;
  - 3) to the extent the funds were not released under subsection (a)(1) or (2) above in which case the remaining funds shall revert back to the tobacco product manufacturer 25 years after the date on which they were placed into escrow.
- b) The release of escrow account funds under subsection (a)(1) above may be effectuated only pursuant to a Court order or a valid, fully executed Settlement Agreement. The order or agreement shall be forwarded to the escrow agent, who shall promptly release the funds to the AGO or the releasing party (as the case may be) in the order in which they were placed into escrow, and only in the amount specified in the order or agreement.
- c) The release of escrow account funds under subsection (a)(2) above may be effectuated only upon the presentation to the AGO of sufficient documentary evidence demonstrating that the tobacco product manufacturer did in fact place funds into the escrow account, that it is current on all escrow obligations and penalties for any period for any brand family (including those of any predecessor TPM), and that it was required to place into escrow amounts greater than it would have paid had it been a participating manufacturer under the MSA. Upon the presentation of such evidence, the AGO and the TPM will by letter direct the escrow agent to promptly release funds from the escrow account to the tobacco product manufacturer in the order in which they were placed into escrow, in the amount specified by the letter of direction.
- d) The release of escrow account funds under subsection (a)(3) above may be effectuated only upon the presentation to the AGO of sufficient documentary evidence demonstrating that the tobacco product manufacturer did in fact place funds into the escrow account, that it is current on all escrow obligations and penalties for any period for any brand family (including those of any predecessor TPM), and that the funds for which it is seeking a release were placed in the

account more than 25 years earlier and they are not needed to pay any judgment or settlement to the State or a releasing party. Upon the presentation of such evidence, the AGO and the TPM will by letter direct the escrow agent to promptly release funds from the escrow account to the tobacco product manufacturer in the order in which they were placed into escrow, in the amount specified by the letter of direction.

(Source: Added at 28 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)



**Section 250.100 Review of AGO Determinations**

Any TPM dissatisfied with the AGO's determination of compliance, or with the AGO's determination regarding quarterly installments, may submit documents relevant to the determination to the AGO and request review of the determination by an Assistant Attorney General who is designated by the Attorney General to undertake such reviews and who did not participate in the initial determination. Any such request for a determination shall be submitted in writing to: Office of the Illinois Attorney General, Special Litigation Bureau, 100 West Randolph Street, 13<sup>th</sup> Floor, Chicago, Illinois, 60601. The burden of proof shall be on the TPM to establish that it or a particular brand family is entitled to be listed in the directory.

(Source: Added at 28 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 250.110 Violations**

- a) The AGO may investigate conduct that appears to be in violation of the Escrow Act, the Escrow Enforcement Act, or this Part, and may request the assistance of the Department in accordance with its investigatory powers under the Cigarette Tax Act [35 ILCS 130], the Cigarette Use Tax Act [35 ILCS 135], or the Tobacco Products Tax Act of 1995 [35 ILCS 143].
- b) If the AGO determines that a violation has occurred, it shall give written notice to the distributor or the NPM that has committed the violation and shall provide written notice of the violation to the Director. The notice shall include copies of any documents evidencing the violation and a recommendation for revocation or suspension of license pursuant to Section 6 of the Cigarette Tax Act, Section 6 of the Cigarette Use Tax Act, or Section 10-25 of the Tobacco Products Tax Act of 1995, as appropriate.
- c) The AGO may initiate litigation in Circuit Court to enforce the provisions of the Escrow Act, the Escrow Enforcement Act, and this Part, or to seek an injunction to restrain a threatened or actual violation of the Acts or rules. In any such action, the AGO shall be entitled to recover the costs of the investigation, the costs of the litigation, and reasonable attorney fees.

(Source: Renumbered from Section 250.50 and amended at 28 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)